



NCAT Administrative and Equal Opportunity Division Procedural Direction 3

VICTIMS SUPPORT MATTERS: TRANSITIONAL APPEALS

This Procedural Direction applies to:	Proceedings in the Administrative and Equal Opportunity Division
Effective Date:	13 February 2014
Replaces Procedural Direction:	Administrative Decisions Tribunal's Victims Support Division: Transitional Appeals: Guideline
Notes:	You should ensure that you are using the current version of this Procedural Direction. A complete set of Procedural Directions and Guidelines is available on the Tribunal website at www.ncat.nsw.gov.au

Purpose

1. This Procedural Direction sets out the procedures the Civil and Administrative Tribunal (NCAT) will follow when dealing with transitional appeals. Transitional appeals are appeals to the Victims Compensation Tribunal (VCT) against determinations of compensation assessors that had been made but not finalised on 16 August 2013.

Relevant Legislation

2. Legislative provisions relating to revenue matters in the Tribunal include the:
 - Victims Support and Rehabilitation Act 1996 (old Act)
 - Victims Support and Rehabilitation Rule 1997 (old Rule)
 - Victims Rights and Support Act 2013 (new Act)
 - Victims Rights and Support Regulation 2013 (new Regulation)
 - *Administrative Decisions Tribunal Act 1997* (ADT Act)

Background

3. The new Act abolished the VCT on the 3 June 2013. Certain matters including appeals against determinations of compensation assessors were transferred to the Administrative Decisions Tribunal (ADT) for determination. The ADT now forms part of NCAT. Initially these transitional appeals were to be determined under the new Act but since 16 August 2013, subject to some qualifications, these appeals are to be determined under the old Act. (new Regulation, cl 16)

Scope of the procedural direction

4. This procedural direction applies to transitional appeals. It does not apply to applications for the review of reviewable decisions made by the Commissioner of Victims Rights under the new Act.

Procedures for determining transitional appeals

5.1 Parties

The parties to a transitional appeal are the person who has appealed against the determination of a compensation assessor (the appellant) and the Compensation Fund Corporation (the respondent).

5.2 Directions

The Tribunal will write to each party to a transitional appeal advising them of the date (the new reserved date) by which each party may file with the Tribunal and give to the other party:

- (a) any written submissions
- (b) any new evidence or material on which they seek to rely

Note: If a party seeks to rely on new evidence or material that party must either identify the special grounds on which the evidence or material should be received or establish that the evidence or material concerns matters occurring after the determination appealed against. [old Act, s 38(3)]

- (c) any submission to the Tribunal expressing the view that the transitional appeal cannot be properly determined without a hearing.

Note: The general rule is that the Tribunal is to determine a transitional appeal "on the papers", that is, without a hearing. Before having a hearing the Tribunal must be satisfied that it cannot properly determine the matter without a hearing. [old Act, s 38(1) and (2)]

5.3 Evidence and material

An appeal is to be determined on the evidence and material provided to the compensation assessor. [(old Act, s 38(3)] That evidence and material is contained in the compensation assessor's file. The Tribunal will admit that file into evidence and take into account any relevant evidence and material. At the conclusion of the proceedings the Tribunal will return the file to Victims Services.

5.4 **Members**

All appeals will be heard and determined by a Tribunal member assigned to the Administrative and Equal Opportunity Division.

Note: this is a direction pursuant to the new Act, sch 2, cl 13(2).

5.5 **Determination of appeals**

After the new reserved date or after the hearing, the Tribunal will determine the appeal by either affirming or setting aside the determination of the compensation assessor. The Tribunal does not have power to remit the application to a compensation assessor. [new Regulation, cl 16(1)]

5.6 **Costs**

The Tribunal may order the respondent to pay the appellant's legal costs of up to \$500 if the appeal is determined without a hearing and up to \$1500 if the appeal is determined after a hearing. [old Rule, cl 12(6)]

5.7 **Decisions**

The Tribunal's written decision and reasons will be sent to the parties. The decision may be published on the Caselaw website at www.caselaw.nsw.gov.au at the President's discretion.

5.8 **Anonymisation and non-publication**

It is an offence for any person to publish or broadcast the name of the appellant, a witness or any other person mentioned or involved in an appeal hearing without the consent of the Tribunal. [old Act, sch 2, cl 14(1)]. The Tribunal will anonymise the appellant's name and make any other non-publication order that it is satisfied that it is desirable to make.

Appeals

6. There is no right to appeal against the Tribunal's decision to NCAT's Internal Appeal Panel or to the District Court.

(Sgd)

13 February 2014

MAGISTRATE NANCY HENNESSY

Deputy President